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10/734,102	12/10/2003	Daniel H. Abelow	03058-004006	7959

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EXAMINER

DIXON, THOMAS A

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,102

Applicant(s)

ABELOW, DANIEL H.

Examiner

Thomas A. Dixon

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-139 is/are pending in the application.
4a) Of the above claim(s) 1-48 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 48-139 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/10/03
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-47 have been cancelled, claims 48-139 added

Priority

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 120 based on parent Application No. 09/37,663 filed on 08/06/1999. ***Information***

Disclosure Statement

3. The information disclosure statement (IDS) submitted on 12/10/03 is not in compliance with the provisions of 37 CFR 1.97. The information disclosure statement is being considered by the examiner, in respect to the US references, but not the NPL or Foreign references, which references must accompany the IDS.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
5. The new abstract is acceptable.

Claim Interpretation

6. Claims directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987).

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The structural limitations of claim 48, including units of a commodity, user interface, memory, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 98, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 108, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 109, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 110, including units of a commodity, user interface, memory, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 119, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 120, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

The structural limitations of claim 121, including units of a commodity, user interface, communication element and software that manages interactions are disclosed in Kaplan (5,237,157) as described herein.

Also as described the limitations of the claims do not distinguish the claimed apparatus from the prior art.

Double Patenting

7. Claim 53 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 90.

Claim 55 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 92.

Claim 56 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 97.

Claim 57 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 118.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 48-52, 54, 58-73, 75-89, 98-117, 119-139 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaplan (5,237,157).

As per Claim 48.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a memory, see figure 2 (60);

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

As per Claims 50-52, 54, 58, 61-70, 72-73, 75-79, 82-89, 122-129, 131-133.

A described the limitations of the claims do not distinguish the claimed apparatus from the prior art.

As per Claims 71.

Kaplan ('157) further discloses a sound recorder, see column 4, lines 45-47.

As per Claim 98.

Kaplan ('157) discloses:

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units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

As per Claims 99-107.

A described the limitations of the claims do not distinguish the claimed apparatus from the prior art.

As per Claim 108.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

As per Claim 130.

A described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per Claim 109.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

As per Claim 110.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a memory, see figure 2 (60);

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

As per Claims 111-117, 134.

A described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per Claim 119.

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Kaplan ('157) discloses:
units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;
a user interface, see figure 4;
a communication element, see figure 2 (80); and
software that manages interactions, see column 3, lines 48-52.

As per Claim 120.
Kaplan ('157) discloses:
units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;
a user interface, see figure 4;
a communication element, see figure 2 (80); and
software that manages interactions, see column 3, lines 48-52.

As per Claim 121.
Kaplan ('157) discloses:
units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;
a user interface, see figure 4;
a communication element, see figure 2 (80); and
software that manages interactions, see column 3, lines 48-52.

As per Claim 135.
Kaplan ('157) discloses:
receiving, from different units of a commodity, information generated from two-way local interactions between users of the different units of the commodity, the interactions eliciting from respective users their perceptions of the commodity, see column 3, lines 14-24, 42-52;
collecting and storing the received information at a central location, see column 3, lines 48-52 and column 5, lines 42-44.

As per Claim 136.
Kaplan ('157) further discloses enabling users of the commodities to access the received information, see column 5, lines 53-55.

As per Claim 137.
Kaplan ('157) further discloses enabling 3rd parties to access the received information, see column 3, lines 42-46.

As per Claim 138.
Kaplan ('157) further discloses third parties include vendors, see column 3, lines 50-52.

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As per Claim 139.

Kaplan ('157) further discloses marketing the commodity using the received information, see column 3, lines 42-52.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 53, 74, 90-97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan (5,237,157) in view of Lohrey et al (4,803,348).

As per Claim 53.

Kaplan ('157) does not disclose a telephonic device.

Lohrey et al ('348) teaches a kiosk with the equivalent of a telephonic device, see figure 2 (40, 42, 44) and step 5 for the benefit of increased customer service.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Kaplan ('157) to include a microphone and speaker to allow for voice communications as taught by Lohrey et al ('348) for the benefit of increased customer service.

As per Claim 74.

Kaplan ('157) does not disclose the two-way interaction comprises voice communication.

Lohrey et al ('348) teaches a kiosk with voice communications, see figure 2 (40, 42, 44) and step 5, for the benefit of increased customer service.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Kaplan ('157) to include a microphone and speaker to allow for voice communications as taught by Lohrey et al ('348) for the benefit of increased customer service.

As per Claim 90.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24;

a user interface, see figure 4;

a communication element, see figure 2 (80); and

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software that manages interactions, see column 3, lines 48-52.

Kaplan ('157) does not disclose a telephonic device.

Lohrey et al ('348) teaches a kiosk with the equivalent of a telephonic device, see figure 2 (40, 42, 44) and step 5 for the benefit of increased customer service.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Kaplan ('157) to include a microphone and speaker to allow for voice communications as taught by Lohrey et al ('348) for the benefit of increased customer service.

As per Claims 91-97.

A described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

10. Claim 55-57, 60, 80, 118 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan (5,237,157) in view of Glick et al (5,283,819).

As per Claim 55.

Kaplan ('157) does not disclose the commodity is a fax.

Glick et al ('819) teaches interconnected computer, television, telephone and fax, see figure 1, for the benefit of controlling a multimedia system.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the fax could be the portion of the multimedia system that is the commodity, for the benefit of controlling a multimedia system.

As per Claim 56.

Kaplan ('157) does not disclose the commodity is a fax.

Glick et al ('819) teaches interconnected computer, television, telephone and fax and further microphone and speaker which are seen to be equivalent to the fax machine's handset, see figure 1, for the benefit of controlling a multimedia system.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the fax could be the portion of the multimedia system that is the commodity, for the benefit of controlling a multimedia system.

As per Claim 57.

Kaplan ('157) further discloses television equipment, see column 2, line 24, but does not disclose the commodity is a television.

Glick et al ('819) teaches interconnected computer, television, telephone and fax, see figure 1, for the benefit of controlling a multimedia system.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the television could be the portion of the multimedia system that is the commodity, for the benefit of controlling a multimedia system.

As per Claim 60.

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A described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As per Claim 80.

Kaplan ('157) further discloses a keypad, see figure 3.

As per Claim 118.

Kaplan ('157) discloses:

units of a commodity that are used by respective users indifferent locations, see column 3, lines 14-24, and further television equipment, see column 2, line 24;

a user interface, see figure 4;

a communication element, see figure 2 (80); and

software that manages interactions, see column 3, lines 48-52.

Kaplan ('157) does not disclose the commodity is a television.

Glick et al ('819) teaches interconnected computer, television, telephone and fax, see figure 1, for the benefit of controlling a multimedia system.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the television could be the portion of the multimedia system that is the commodity, for the benefit of controlling a multimedia system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas A. Dixon
Primary Examiner
Art Unit 3629

March 05